

# CITY COUNCIL REPORT



Meeting Date: October 21, 2014  
 General Plan Element: *Provide for the orderly administration of the affairs of the City*  
 General Plan Goal: *Fiscal management*

## ACTION

**Adopting Resolution No. 9926 authorizing settlement of *Jage, et al. v. City of Scottsdale, et al.*** Consider adopting Resolution No. 9926 authorizing settlement in the amount of \$475,000 of Michael Jage and Marquie Jage's negligence lawsuit against the City styled *Jage, et al. v. City of Scottsdale, et al.*, Case No. CV2011-098081, currently pending in the Maricopa County Superior Court.

### Background

This litigation stems from a motor vehicle accident that occurred at the intersection of Scottsdale and McDowell Roads on October 4, 2010, between Michael Jage and City of Scottsdale Police Officer Donald Dittman. Officer Dittman was responding to assist with traffic control for another accident. He was in a fully marked patrol vehicle with lights activated and siren chirping. As he approached the intersection, he looked but did not see Mr. Jage who was riding a motorcycle southbound on Scottsdale Road. Having a green light, Mr. Jage traveled into the intersection and collided with Officer Dittman's vehicle. Mr. Jage claimed multiple injuries as a result of the collision, and his wife Marquie brought a loss of consortium claim.

The City reached a tentative settlement of this litigation at mediation, subject to the approval of the City Council. The recommended settlement is in the amount of four hundred seventy-five thousand dollars (\$475,000) and will lead to the dismissal of the case and termination of the litigation. Plaintiffs' initial Notice of Claim sought approximately \$5,640,000 from the City.

## ANALYSIS & ASSESSMENT

### Recent Staff Action

The case has been defended by the City Attorney's Office with assistance from outside counsel, Robert Murphy. The matter has been in litigation for several years and extensive discovery has taken place. The parties recently attended a mediation. At this mediation, the Jages agreed to settle their case against the City and Officer Dittman for four hundred seventy-five thousand dollars (\$475,000), contingent upon the City Council's approval.

### **Policy Implications**

None.

### **Significant Issues to be Addressed**

Given the risk of litigation and the additional costs of moving forward to a jury trial, outside counsel, the City Attorney's Office and Risk Management Department believe a settlement amount of \$475,000 is in the best interests of the City. Settlement of this action will resolve the uncertainty of litigation.

### **Community Involvement**

No community involvement is necessary on this item as this matter is in litigation.

## **RESOURCE IMPACTS**

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### **Available funding**

Funding is available in the Risk Management Operating Budget (710-23740-52483).

### **Staffing, Workload Impact**

Approval of the proposed settlement brings this litigation to a conclusion and will eliminate the need for staff resources from the City Attorney's Office, Risk Management and other Departments to be spent on this case, as well as eliminating the risk and uncertainty of litigation.

### **Future Budget Implications**

The proposed settlement may be included in the City's primary property tax rate for the next year. The eligibility of settlement and judgment payments for possible inclusion in the City's primary property tax rate is based upon an Arizona Attorney General opinion. The City of Scottsdale has in the past included paid tort settlements equal to or greater than \$20,000 in the City's primary tax rate to reimburse the Self-Insured Fund for payment of the claim.

### **Cost Recovery Options**

None.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution No. 9926 and authorize settlement and release of this litigation in the amount of \$475,000 as proposed.

### **Proposed Next Steps**

If the settlement is approved, City representative(s) will execute settlement documents as proposed and the City will pay the settlement amount within a reasonable time thereafter.

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**RESPONSIBLE DEPARTMENT(S)**

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General Government, City Attorney's Office – Civil Division  
Risk Management

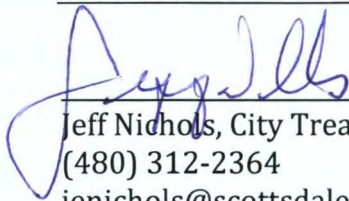
**STAFF CONTACTS (S)**

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Bruce Washburn, City Attorney, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)  
Katie Callaway, Director, Risk Management, [kcallaway@scottsdaleaz.gov](mailto:kcallaway@scottsdaleaz.gov)

**APPROVED BY**

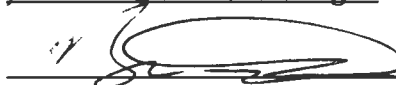
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Jeff Nichols, City Treasurer  
(480) 312-2364  
[jenichols@scottsdaleaz.gov](mailto:jenichols@scottsdaleaz.gov)

9/30/14

Date



Bruce Washburn, City Attorney  
(480) 312-2405  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

10/1/14

Date

**ATTACHMENTS**

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1. Resolution No. 9926

RESOLUTION NO. 9926

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, CONCERNING *JAGE, ET AL. V. CITY OF SCOTTSDALE, ET AL.*, CASE NO. CV2011-098081 CURRENTLY PENDING IN THE SUPERIOR COURT IN AND FOR MARICOPA COUNTY, ARIZONA.

WHEREAS, Michael and Marquie Jage, husband and wife, brought suit against the City of Scottsdale and City of Scottsdale employees seeking to recover monetary damages for injuries to Michael Jage allegedly resulting from a motorcycle/motor vehicle accident which occurred on October 4, 2010 in Scottsdale; and

WHEREAS, the City has decided to resolve the disputed issues and compromise the claims by settling herein; and

WHEREAS, it is in the best interest of the City to effectuate a settlement of the matter of *JAGE, ET AL. V. CITY OF SCOTTSDALE, ET AL.*, Maricopa County Superior Court Case No. CV 2011-098081.

NOW, THEREFORE, BE IT RESOLVED by the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. That the City Council hereby authorizes \$475,000.00 to be paid from the City's Risk Management Operating Budget (710-23740-52483) for settlement of *JAGE, ET AL. V. CITY OF SCOTTSDALE, ET AL.*, Maricopa County Superior Court Case No. CV 2011-098081.

Section 2. That the City Manager, the City Treasurer, the City Attorney, and their respective staff are authorized and directed to execute such documents and take such other actions as are necessary to carry out the purpose of this Resolution.

PASSED AND ADOPTED by the Council of the City of Scottsdale this \_\_\_\_ day of October, 2014.

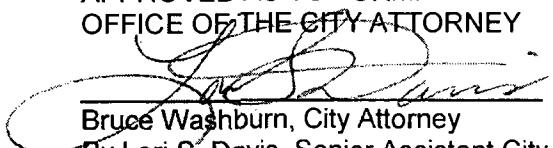
CITY OF SCOTTSDALE, an Arizona  
Municipal Corporation

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY

  
\_\_\_\_\_  
Bruce Washburn, City Attorney  
By Lori S. Davis, Senior Assistant City Attorney